IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1525 OF 2006

M/s. Narmada Estates Pvt. Ltd. .... Petitioner
Vs.
Pune Municipal Corporation & Ors. .... Respondents

Shri M.J. Jamdar for the Petitioner.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: APRIL 10, 2006

P.C:

1. Heard the learned Advocate for the petitioner. The petitioner challenges the order dated 2-1-2006 passed by the trial Court in R.C. Suit No.1423 of 2001 dismissing the petitioner's application for amendment of the plaint. The application has been primarily rejected on the ground that the petitioner, who is the plaintiff in the suit, has not explained as to why the application for amendment was not filed earlier to the commencement of the trial and secondly that the presence of the proposed defendants is not necessary in order to determine the real question in controversy between the parties.

2. The fact that the adjoining property belongs to the persons proposed to be added as the defendants was to

the knowledge of the petitioner much prior to the filing of the plaint is not in dispute. The fact that any order which may be passed in the present proceedings may adversely affect the said persons was to the knowledge of the petitioners much prior to the filing of the plaint is also not in dispute. In fact, bare reading of the pleadings in the plaint discloses that the petitioner was fully aware that any obstruction on the road through the property claimed by the petitioner may cause prejudice to the persons who are proposed to be joined as the party-defendants, yet they were not joined as the defendants at the time of filing of the suit nor prior to the commencement of the trial in the suit.

3. The Order 6, Rule 17 of the C.P.C., as amended and in force since 1-7-2002, provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties, provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

4. Undisputedly, inspite of the facts narrated above being within the knowledge of the petitioner/plaintiff, no steps were taken either to amend the plaint or to join the proposed defendants prior to the commencement of the trial. The application for amendment does not disclose any reason for the delay in filing the application. Apparently, there was no due diligence disclosed by the petitioner in raising the matter before the commencement of the trial. There is no explanation for the delay in raising the matter and waiting for commencement of the trial to raise the matter in issue. In the circumstances, therefore, no fault can be found with the impugned order which has been passed taking into consideration the import of Order 6, Rule 17 of the C.P.C.. In the circumstances, therefore, the impugned order cannot be said to disclose any jurisdictional error and therefore does not warrant interference in writ jurisdiction. Hence the petition fails and is rejected.

(R.M.S. Khandeparkar, J.)

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